

**Assembly Bill No. 691**

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Passed the Assembly    April 19, 2004

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*Chief Clerk of the Assembly*

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Passed the Senate    April 16, 2004

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2004, at \_\_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_\_

An act to add Chapter 1.6 (commencing with Section 120392) to Part 2 of Division 105 of the Health and Safety Code, relating to immunizations.

## LEGISLATIVE COUNSEL'S DIGEST

AB 691, Daucher. Nursing facilities: vaccines.

Under existing law, the State Department of Health Services is responsible for the licensure and regulation of health facilities, including skilled nursing facilities and intermediate care facilities, as defined.

Under existing law, the department also has responsibilities relating to the prevention and control of communicable diseases by various means, including requiring immunization by vaccine for various populations.

This bill would require a skilled nursing facility, an intermediate care facility, or a nursing facility, as defined, to offer immunizations for influenza and pneumococcal disease to its residents, aged 65 years or older, between October 1 and April 1 of each year, and to offer pneumococcal vaccine to all new admittees. The bill would require that the facility be reimbursed the standard Medi-Cal rate for vaccines provided to Medi-Cal recipients, except under specified circumstances. The bill would require the facility to obtain informed consent for the immunization services from the resident or, if the person lacks the capacity to make medical decisions, for the person legally authorized to make medical decisions on the resident's behalf.

This bill would specify circumstances under which the immunizations may not be administered to a resident, and circumstances under which the facility shall not be required to provide the immunization services required by the bill. The bill would provide that if a health care facility fails to offer an immunization pursuant to the bill due to lack of availability of vaccine, or due to the physician's or resident's refusal or lack of cooperation, the failure shall not be the basis for issuing a deficiency or citation against the facility's license. The bill would authorize the department to issue a deficiency or citation for failure



to comply with provisions of the bill relating to resident evaluation and consent procedures.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 1.6 (commencing with Section 120392) is added to Part 2 of Division 105 of the Health and Safety Code, to read:

CHAPTER 1.6. INFLUENZA AND PNEUMOCOCCAL IMMUNIZATIONS

120392. For purposes of this chapter, the following definitions apply:

(a) “Health care facility” means a skilled nursing facility as defined in subdivision (c) of Section 1250, an intermediate care facility as defined in subdivision (d) of Section 1250, or a nursing facility as defined in subdivision (k) of Section 1250. This chapter shall not apply to hospital-based skilled nursing facilities.

(b) “Medically contraindicated” means that the administration of the influenza or pneumococcal vaccines to a person, because of a medical condition of that person, would be detrimental to the person’s health if the person receives either or both of the vaccines.

120392.2. (a) Each year, commencing October 1 to the following April 1, inclusive, every health care facility, as defined in subdivision (a) of Section 120392, shall offer, pursuant to Section 120392.4, immunizations for influenza and pneumococcal disease to residents, aged 65 years or older, receiving services at the facility, based upon the latest recommendations of the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention, and the latest recommendations of appropriate entities for the prevention, detection, and control of influenza outbreaks in California long-term care facilities.

(b) Each health care facility, as defined in subdivision (a) of Section 120392, shall offer, pursuant to Section 120392.4, pneumococcal vaccine to all new admittees to the health care facility, based on the latest recommendations of the ACIP.

(c) The facility shall be reimbursed the standard Medi-Cal rate for an immunization provided to a Medi-Cal recipient, unless he



or she is also a Medicare recipient whose coverage includes reimbursement for the immunization.

120392.4. (a) A resident who receives services at a health care facility during the period of October 1 to April 1 shall have his or her status for influenza and pneumococcal immunization determined by his or her physician or facility medical director, and, if appropriate, the facility shall offer to make the immunizations available, unless the facility, through written policies and procedures and using standardized nursing procedures, offers to make the immunizations available without limitation as to the period when the residents receive services at the facility.

(b) A health care facility shall obtain from a resident who requests immunization services, or, if the person lacks the capacity to make medical decisions, from the person legally authorized to make medical decisions on the resident's behalf, informed consent for the resident to be immunized by vaccination against influenza or pneumococcal disease, or both, to be conducted by the facility while the resident is receiving services at the facility.

(c) A health care facility shall comply with Section 1418.8 with respect to a resident who lacks the capacity to make health care decisions, and there is no person with legal authority to make these decisions on behalf of the resident.

(d) The health care facility shall document in a resident's medical record whether the resident has been offered the influenza vaccine or the pneumococcal vaccine.

120392.6. No person who has been offered the vaccine as required under this chapter may receive either an influenza vaccine or pneumococcal vaccine pursuant to this chapter if any of the following conditions exists:

(a) The vaccine is medically contraindicated, as described in the product labeling approved by the federal Food and Drug Administration or by the recommendations established by the Advisory Committee on Immunization Practice (ACIP) of the Centers for Disease Control and Prevention that are in effect at the time of vaccination.

(b) Receipt of the vaccine is against the resident's personal beliefs.

(c) Receipt of the vaccine is against the resident's wishes, or, if the person lacks the capacity to make medical decisions, is against



the wishes of the person legally authorized to make medical decisions on the resident's behalf.

120392.8. (a) Notwithstanding any other provision of this chapter, a health care facility shall not be required to offer immunizations for influenza and pneumococcal disease under either of the following circumstances:

(1) The facility is unable to obtain the vaccine due to a shortage of the supply of vaccine.

(2) The resident refuses to pay for the vaccine and there is no other funding source available to pay for the cost of the vaccine.

(b) If a health care facility, as defined in subdivision (a) of Section 120392, fails to offer an immunization pursuant to this chapter due to lack of availability of vaccine, a physician's refusal to assess the resident or cooperate with the recommendations of the provisions of this chapter, or lack of resident cooperation, the failure shall not be the basis for issuing a deficiency or citation against the facility's license.

(c) This chapter is intended to encourage immunizations for residents in health care facilities, and the department shall consider a facility's efforts to prevent a violation of this chapter prior to issuing a deficiency or citation. The department may issue a deficiency or citation for failure to comply with Section 120392.4.



Approved \_\_\_\_\_, 2004

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*Governor*

